

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE  
ZONING MAP AMENDMENT REPORT (#FZC-19-23)  
CAHOON ENTERPRISES, LLC  
JANUARY 21, 2020**

**I. GENERAL INFORMATION**

**A. Project Description**

This is a report to the Flathead County Planning Board and Board of Commissioners regarding a request by Cahoon Enterprises, LLC, for a zoning map amendment within the Highway 93 North Zoning District. The proposed amendment, if approved, would change the zoning of the subject property from 'SAG-10 Suburban Agricultural' to 'SAG-5 Suburban Agricultural.'

**B. Application Personnel**

**1. Owner/Applicants**

Cahoon Enterprises, LLC  
127 Wishart Road  
Columbia Falls, MT 59912

**Technical Representative**

Sands Surveying, Inc.  
2 Village Loop  
Kalispell, MT 59901

**C. Process Overview**

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11<sup>th</sup> Street West in Kalispell.

**1. Land Use Advisory Committee/Council**

This property is not located within the jurisdiction of a Land Use Advisory Committee.

**2. Planning Board**

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on February 12, 2020 at 6:00 P.M. in the 2<sup>nd</sup> Floor Conference Room of South Campus Building located at 40 11<sup>th</sup> Street West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration.

**3. Commission**

In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell.

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

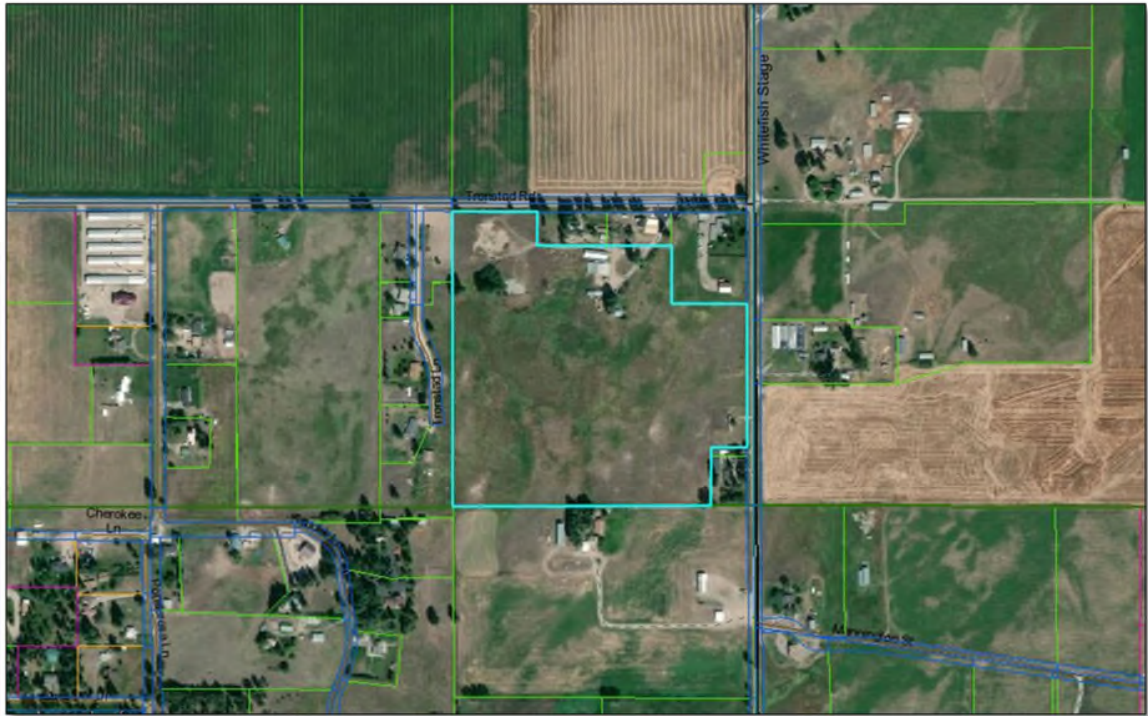
**II. PROPERTY CHARACTERISTICS**

**A. Subject Property Location and Legal Description**

The total acreage of the subject property is approximately 32.99 acres. The property is located at 412 & 480 Tronstad Road near Kalispell, MT (see Figure 1 below) and can be legally described as:

A tract of land situated, lying and being in the Southeast Quarter of the Southeast Quarter (SE¼ SE ¼) of Section 18, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana. (Tract 1 of Certificate of Survey No. 21205)

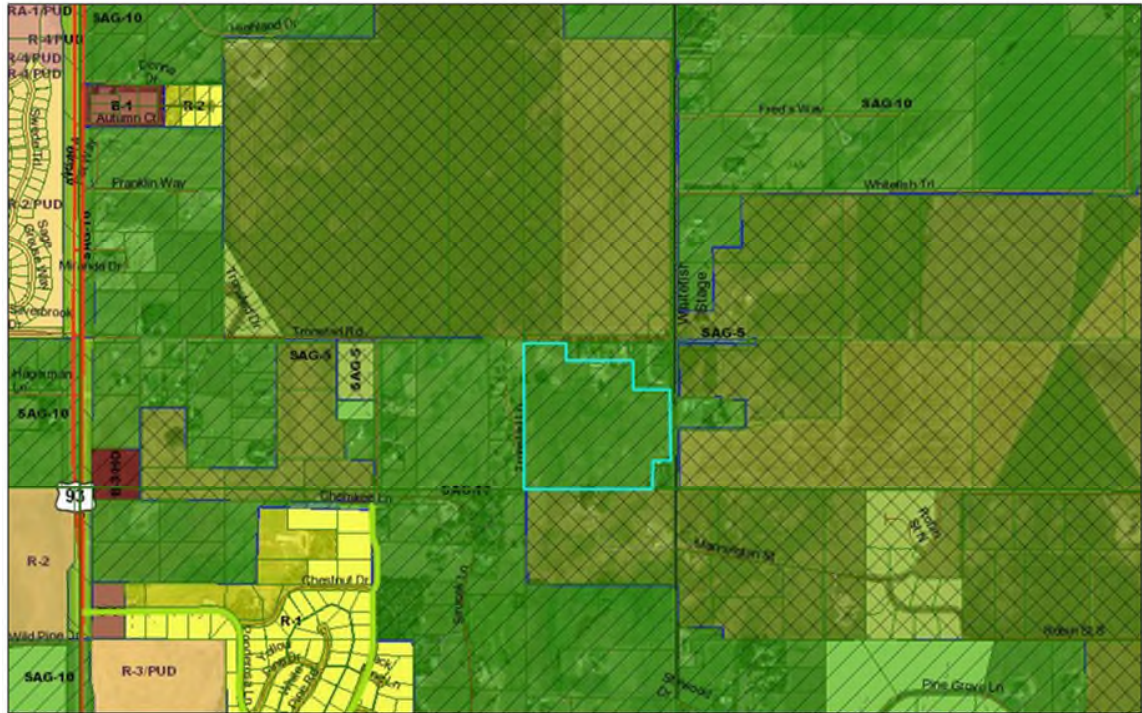
**Figure 1:** Subject property (outlined in yellow)



**B. General Character of and Reason for Amendment**

The character of the area surrounding the proposed zone change and subdivision is predominantly agricultural and rural residential. Properties between Whitfish Stage and Ponderosa Lane, south of Tronstad Road, consist of estate size residential development while the area north and east of the subject property has been utilized for agricultural production for many years. As previously stated, the properties currently zoned SAG-10 and the applicants are proposing to amend the zoning to SAG-5, stating “the applicant proposes the SAG-5 in order to develop a cluster subdivision and match some of the neighboring zoning designations.”

**Figure 2:** Current zoning on the subject property (highlighted in yellow)

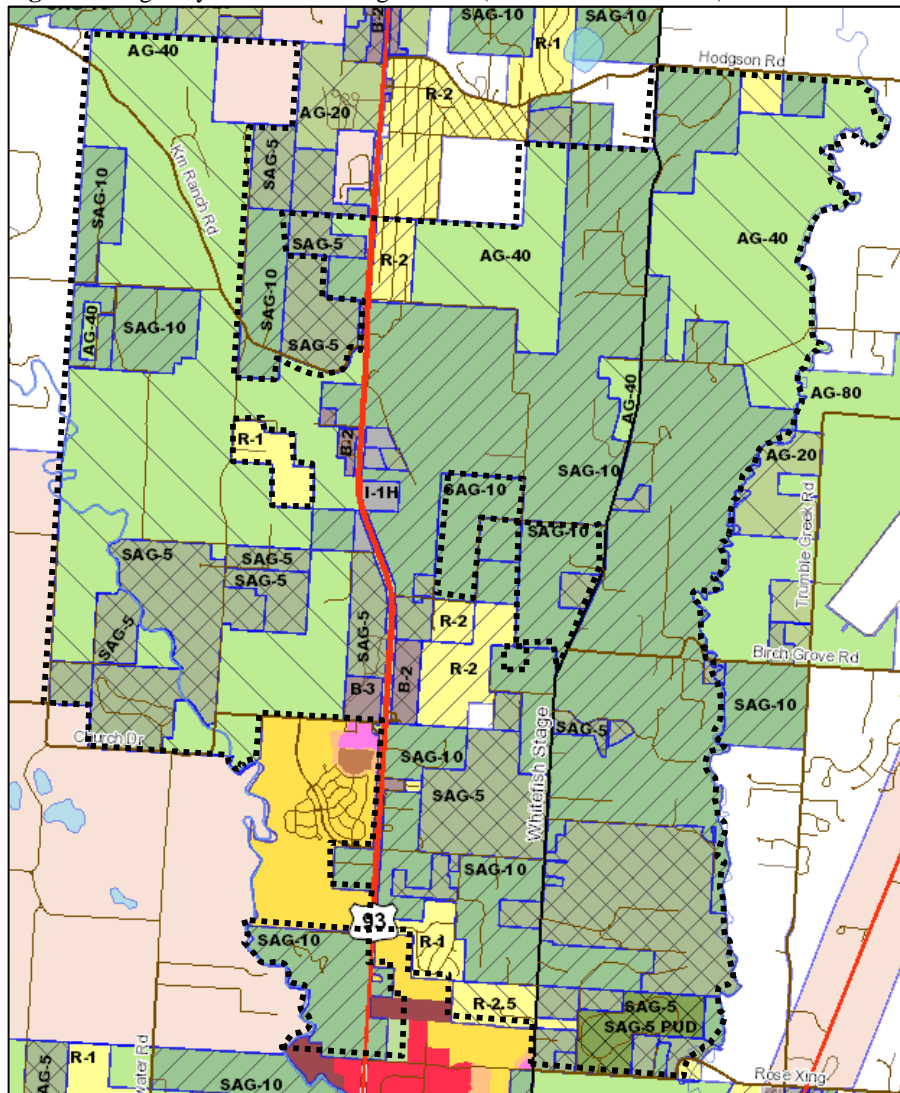


### C. Adjacent Zoning and Character of the Overall Zoning District

The property is located in the Highway 93 North Zoning District. The character of the zoning district in the vicinity of the subject property consists of suburban agricultural, agricultural and residential uses. The property is located at the intersection of Tronstad Road and Whitefish Stage and north of the City of Kalispell.

The subject property is surrounded by properties primarily zoned SAG-10 and SAG-5, including the Whitefish River Trails subdivision that was a clustered residential development in a SAG-5 zone. Also in the vicinity of the property is R-1 and R-2.5, both to the southwest of the subject property, adjacent to the City of Kalispell. Properties to the north and east are primarily agricultural and larger lot residential development.

**Figure 3: Highway 93 North Zoning District (outlined in black dash)**



#### **D. Public Services and Facilities**

Sewer:	Individual septic
Water:	Individual well
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyLink
Schools:	Edgerton School District Flathead High School District
Fire:	West Valley Fire District
Police:	Flathead County Sheriff

### **III. COMMENTS**

## **A. Agency Comments**

1. A joint agency referral was sent to the following agencies on December 10, 2019 for the proposed subdivision proposal.

- BPA
- City of Kalispell Planning Department\*
- DEQ Subdivision Section
- DNRC
- Public Works/Flathead County Road Department
- Flathead City-County Health Department
- Flathead Conservation District
- Flathead County Address Coordinator/GIS Department
- Flathead County Sheriff
- Flathead County Solid Waste
- Flathead County Weeds & Parks Department
- Glacier High School District
- Kalispell School District
- MDT
- MT Fish, Wildlife and Parks
- West Valley Fire District

\* A follow up email was sent to the Kalispell Planning Department on December 11, 2019 to clarify that the proposal includes a zone change.

2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
  - Comment: “At this time, BPA does not object to this request, as the property is located 1.58 miles away from the nearest BPA transmission lines or structures.” Email received December 16, 2019
- Flathead City-County Environmental Health Department
  - Comment: “The proposed development is subject to review under the Sanitation in Subdivisions Act (MCA Title 76-4-1). The review will address potable water supply, wastewater treatment, storm water drainage, and solid waste disposal.” Letter received December 17, 2019
- Flathead County Road and Bridge Department
  - Comment: “Thank you for the opportunity to comment on the above referenced application. After completing our review, we have the following comment. On page 25 of the attached Environmental Assessment the applicant states that Whitefish Stage is maintained by Flathead County Road Department. We do maintain Tronstad Road but Whitefish Stage is maintained by the Montana Department of Transportation.” Letter received December 17, 2019
- Flathead County Solid Waste District
  - Comment: “The District is requesting that all new subdivisions use a contract hauler to bring solid waste to the landfill. Evergreen Disposal is the licensed



(PSC) Public Service Commission hauler in this area. Their business phone number is 406-257-1734. After reading the project summary, I believe the proposed Whitefish Stage Estates Subdivision is approaching the issue of solid waste in an appropriate manner.” Letter received December 18, 2019

- Montana Fish, Wildlife & Parks
  - Comment: “Montana Fish, Wildlife & Parks has no comment regarding the preliminary plat of 9 residential lots comprising Whitefish Stage Estates subdivision.” Letter received December 20, 2019
- Flathead County GIS Department
  - Comment: “As proposed, the road name ‘Placid Dr’ is hereby approved by the Flathead County GIS Department for use on the plat of Whitefish Stage Estates. Road names are reserved for a period of three years. In the event that the road name has not been adopted prior to the reservation period expiration, the name reservation shall be voided.” Letter received December 26, 2019
- Montana Department of Transportation
  - Comment: “Thank you for contacting the Montana Department of Transportation (MDT) regarding the proposed subdivision for the property located north of Kalispell on the west side of Whitefish Stage Road (Secondary 292) and south of Tronstad Road.

Any new access to Whitefish Stage requires an approach permit to be approved by the MDT. The owners representative has already been in contact with MDT regarding this proposal and MDT has determined that a new approach is possible at the proposed location.

One other comment is that there will be a need to make future improvements to Whitefish Stage Road and that currently there is a study project under way for roadway improvements. Essentially the study process will gather information to determine the issues/needs along the corridor, then identify and evaluate alternatives to address the issues/needs. In addition the Kalispell Area Long Range Transportation Plan recommended future improvements to Whitefish Stage to accommodate traffic demands (see MSN 5 in Chapter 9). Thus it is recommended that there be adequate setbacks along the roadway to preserve the area for future right-of-way acquisition to accommodate roadway improvements which will benefit all highway users including adjacent property owners. Typically it is recommended to preserve 80 feet from the highway centerline for width to accommodate improvements which can include road widening, slope flattening for safety clear zone, drainage, public utilities, ped/bike facilities, etc.” Email received December 27, 2019

## **B. Public Comments**

1. Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on January 24, 2020. Legal notice of the Planning Board public hearing on this application was published in the January 26, 2020 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for February 12, 2020 and/or the Commissioner's Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

#### **IV. EVALUATION OF PROPOSED AMENDMENT**

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

##### **A. Build-Out Analysis**

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

Per Section 3.07 and 3.08 of the Flathead County Zoning Regulations (FCZR), SAG-10 and SAG-5 are both defined as '*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate type residential development.*'

The permitted uses and conditional uses for the SAG-10 and the SAG-5 zoning are very similar. The amendment would reduce the number of permitted uses from 21 to 16 and increase the number of conditional uses from 23 to 28.

The permitted and conditional uses allowed within the SAG-5 but not allowed in SAG-10 are:

- Recreational vehicle park

The permitted and conditional uses allowed within the SAG-10 but not allowed in SAG-5 are:

- Dairy product processing, bottling, and distribution
- Ranch employee housing

The bulk and dimensional requirements within the current and proposed zoning require a 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For SAG-10 the permitted lot coverage is 20% and maximum height of 35 feet and for SAG-5 the permitted lot coverage is 25% (residential uses) and maximum height of 35 feet.

The existing zoning requires a minimum lot area of 10 acres. The subject property totals 32.99 acres. Currently, two additional lots could be created. The proposed zoning requires a minimum lot area of 5 acres and 6 additional 5 acres lots could potentially be created, with up to 9 clustered residential lots if the applicant uses the clustering provisions. The bulk and dimensional requirements are the same in the SAG-10 and the SAG-5, the zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing SAG-10 zoning. The amendment would reduce the number of permitted uses and increase the number conditional uses. Many of the reduced permitted uses between SAG-10 and SAG-5 are simply moved to the conditional use list.

**B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)**

**1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Suburban Agricultural.' The proposed Suburban Agricultural zoning classification would comply with the current Suburban Agricultural designation. Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, "This map depicts areas of Flathead County that are legally designated for particular use. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plan. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map." Staff interprets this to mean the Designated



Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on policies, rather than maps in the document.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

❖ *G.2 – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*

○ The approval of the zone change affirms the important policy protecting private property rights. Any use and subdivision of the land will require compliance with the Flathead County Zoning Regulations and the Flathead County Subdivision Regulations.

❖ *G.4 – Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.*

• *P.4.2 – Identify lands most suited to agriculture (appropriate soils, access to water, shape and size of parcel, etc.).*

• *P.4.3 – Identify a desirable gross density for rural residential development that retains land value, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc).*

○ The zoning map amendment allows greater flexibility to the land owner while still allowing agriculture in the area. The proposed zone change will be in line with the adjacent SAG-5 densities which are intended to be a transitional zone between urban and more rural, agricultural uses and densities. The application points out, “the cluster provision is a tool that the County developed to provide for some development on less desirable agricultural lands while at the same time preserving a large tract that could be used for agricultural or hobby farm.”

❖ *G.8 – Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*

○ The SAG-5 designation would generally allow for development at densities of 1 dwelling unit per 5 acres, although the proposed zone change is being processed in conjunction with a clustered residential subdivision that allows for bonus density in accordance with Section 5.09 FCZR.

❖ *G.23 – Maintain safe and efficient traffic flow and mobility on county roadways.*

• *P.23.2 – Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*

• *P.23.4 – Recognize areas in proximity to employment and retail centers as more suitable for higher residential densities and mixed use development.*

- This report contains discussion on the proposals potential burden on transportation below.

- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*

- Further discussion is contained below in this report on the adequate provision of schools below.

- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*

- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*

- This report contains discussion on the adequacy of emergency service below.

**Finding #1:** The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the Suburban Agriculture land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.

## **2. Whether the proposed map amendment is designed to:**

### **a. Secure safety from fire and other dangers;**

The subject property is located within the West Valley Fire District and the nearest fire and emergency response center is located approximately 1/3 miles south of the property on Whitefish Stage. The West Valley Fire Department would respond in the event of a fire or medical emergency. The West Valley Fire Department did not provide comments on this proposal. The subject property is not located within the Wildland Urban Interface (WUI) or within a fire district priority area.

The subject property is located on Whitefish Stage which is classified as a two lane MDT maintained state secondary highway within a 60 foot easement as well as Tronstad Road which is a two-lane local road maintained by Flathead County. The roads appear adequate to provide access for emergency services. The subject property is generally flat and cleared of vegetation, without dangers of avalanche or slumping.

FEMA FIRM Panel 30029C1420J shows the property as located within an unshaded Zone X an area determined to be outside the 0.2% annual chance floodplain. There is a low chance of flooding on the subject property.

**Finding #2:** The proposed map amendment will not impact safety from fire and other danger because the property is not located in the WUI, is located on an MDT maintained secondary highway and county-maintained local road, is located approximately 1/3 mile from the nearest fire station and is not in a Special Flood Hazard Area.

### **b. Promote public health, public safety, and general welfare;**

The property has direct access to Whitefish Stage, a paved MDT-maintained road and Tronstad Road, a paved County-maintained road. The West Valley Fire

Department would respond in the event of a fire or medical emergency. The Flathead County Sheriff's Department currently provides and will continue to provide police services to the subject property.

The permitted uses and conditional uses for the SAG-10 and the SAG-5 zoning designations are very similar. The build out analysis demonstrated the similarities between the uses of the SAG-5 and SAG-10 zoning. Because of the similarity in uses and availability of adequate transportation, fire, and emergency services, the impacts on public health, public safety and general welfare should be minimal.

**Finding #3:** The proposed zoning map amendment would likely not have a negative impact on public health, public safety and general welfare because the property is served by the West Valley Fire Department and the Flathead County Sheriff, the property is accessed via two paved roads, and the SAG-5 zoning would allow for similar uses to what already exist in the area.

**c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

Primary access to the property is currently off Whitefish Stage to the east and Tronstad Road to the north. Whitefish Stage is a two-lane paved MDT maintained road within 60 foot right-of-way while Tronstad Road is a two-lane, paved road within a 60 foot right-of-way and maintained by Flathead County. Comment from the Montana Department of Transportation indicates the Whitefish Stage is slated for improvements and is currently working on a study that will assess needs along this stretch of roadway. Their comment requests additional setbacks for structures along Whitefish Stage which will be addressed with the proposed preliminary plat.

The subject property is currently served by individual well and septic and the proposed subdivision will also be served by individual well and septic. The applicant will be required to work with Flathead City-County Health Department to meet the needs of any future development. Kate Cassidy from Environmental Health commented on the proposal and indicated that any division of the property less than 20 acres requires review of the parcels under Title 76-4-1 MCA Sanitation in Subdivisions. The review includes potable water supply, wastewater treatment and disposal, stormwater drainage, and solid waste.

While the subject property is located within the Flathead High School District and Edgerton Elementary School District, neither school district provided comments on the proposal. The proposed zoning has the potential to generate school children but is not likely to impact either school. According to census data for Flathead County, the average household size is 2.46 persons and approximately 16.5% of the population is between the ages of 5-18 years. The proposal has the potential to generate 9 additional dwellings and therefore could generate approximately 4 school age children.

**Finding #4:** The proposed amendment would facilitate the adequate provision of transportation water, sewerage, schools, parks, and other public requirements because future growth would lead to a minimal increase in traffic on Whitefish Stage and Tronstad Road, the Montana Department of Transportation and Flathead County Road and Bridge Department will require updated approach permits for any

new approach onto these roads, further division of land on the subject property would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, there would be minimal impact on parks and the proposal has the potential to generate approximately 4 school age children.

**3. In evaluating the proposed map amendment, consideration shall be given to:**

**a. The reasonable provision of adequate light and air;**

The bulk and dimensional requirements, which includes setbacks, have been established to provide for a reasonable provision of light and air. The minimum lot area for the proposed SAG-5 zoning designation is 5 acres and the minimum lot area for the existing SAG-10 zone is 10 acres, although both zones allow for clustering as explained in Section 5.09 FCZR. The density allowed within the proposed zoning would be greater than the density allowed within the current SAG-10 zoning designation. The maximum building height within the proposed zoning is 35 feet. The permitted lot coverage is 20% for the current zoning and would be 25% for residential structures under the proposed zoning.

The setback requirements are the same in the proposed SAG-5 zoning designation as the existing zoning. The required setback from the boundary line is 20 feet from all property boundaries for the principal structure, 20 feet from the front and side corner on accessory structures and 5 feet from the rear and side on accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector and arterials.

The setbacks for the proposed zone are the same as those in the existing SAG-10 zoning designation while a greater area of a lot can be covered in the proposed zoning. The bulk and dimensional requirements for the SAG-5 zoning designation have been established to provide for a reasonable provision of light and air.

**Finding #5:** The proposed zoning map amendment will provide adequate light and air to the subject property because future development will be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation.

**b. The effect on motorized and non-motorized transportation systems;**

Primary access to the property currently exists via Whitefish Stage to the east and Tronstad Road to the north. Whitefish Stage is a two-lane paved MDT maintained road within 60 foot right-of-way while Tronstad Road is a two-lane, paved road within a 60 foot right-of-way and maintained by Flathead County. The Montana Department of Transportation provided a comment indicating change of use on the property will require an updated approach permit and a 80 foot setback from the centerline of the road. These comments will be addressed in the subdivision proposal. The Flathead County Road and Bridge Department provided a comment that confirmed the County's maintenance of Tronstad Road.

Traffic counts from MDT taken in 2018 indicate an average daily traffic of 933 average daily trips along Whitefish Stage between Hodgson Road and Nob Hill

Loop which is a slight decrease in traffic from the two prior years. Using standard trip generation, residential uses generate traffic at typically 10 vehicle trips per dwelling for single family. Approximately 5-9 additional suburban agriculture lots could be created, which would generate up to 90 average daily trips for an increase of 9% on Whitefish Stage. It is expected that some of the potential traffic can be accommodated via Tronstad Road which in 2007 had an average daily traffic count of 738 vehicles west of Whitefish Stage and could see an increase of up to 12%.

Comment from the Montana Department of Transportation indicates the Whitefish Stage is slated for improvements and is currently working on a study that will assess needs along this stretch of roadway. It is unclear if these improvements will include development of a bike and pedestrian path. The Flathead County Trails Plan identifies Whitefish Stage as an arterial bike/pedestrian trail location and as such, future subdivision development on the property would require an easement for a bicycle trail along Whitefish Stage.

**Finding #6:** Effects on motorized and non-motorized transportation systems will be minimal because the Montana Department of Transportation had no specific concerns with this proposal beside the need for additional setbacks, the traffic generated by the proposed zoning would be appropriate given the proposed increase and the future improvements to Whitefish Stage under current review, and future development of the property would require an easement for a pedestrian/bike trail.

**c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

Kalispell is the nearest municipality to the subject property and is located south of the subject property approximately 3/4 miles north of the city limits. The property is located outside the annexation policy boundary but is located within the Growth Policy Future Land Use Map area. An agency referral was sent to the Kalispell Planning Department on December 11, 2019 but staff has not received any comments from the City as of the date on this report.

The Kalispell Growth Policy Planning Area Map designates area to the south of the subject property as *Suburban Residential*. The proposed *SAG-5 Suburban Agriculture* zoning designation would provide for densities much less than the maximum 4 dwelling units per acres as allowed by the Kalispell Growth Policy. It appears that the proposed zoning designation would be compatible with urban growth in the vicinity of Kalispell given the distance of the property from the Kalispell city limits.

**Finding #7:** It appears that the proposed zoning designation would be compatible with urban growth in the vicinity of Kalispell because the property is located outside the annexation policy boundary but is within the extent of the City of Kalispell Growth Policy Future Land Use Area and the proposed zoning is a designation of suburban residential appears to be compatible with the proposed zoning.

**d. The character of the district(s) and its peculiar suitability for particular uses;**

The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal

precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. ***The zoning allows a use that differs significantly from the prevailing use in the area.***

The uses directly adjacent to the subject property on all sides are currently agricultural and residential under the SAG-10 and SAG-5 zoning designations although the property is located within proximity to R-1, R-2.5 and City R-3 and RA-2 zoning designations. Further to the north and east of the subject property are larger agricultural lands with more residential and higher density development located to the south and west adjacent to the City of Kalispell. The proposed SAG-5 zoning designation is designed as to provide a buffer between urban and unlimited agriculture uses, per Section 3.08.010 FCZR. The uses allowed in the SAG-5 zoning designation would not differ significantly from existing uses in the area.

ii. ***The zoning applies to a small area or benefits a small number of separate landowners.***

The proposed zone change would apply to one property and therefore one property owner.

iii. ***The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.***

The zoning map amendment would apply to one tract for the benefit of one owner, however, the uses allowed and densities within the proposed zoning designation are very similar to the existing uses and densities on adjacent property. Many of the land uses listed as permitted uses in the proposed SAG-5 zoning designation exist in the area of the subject property, or would not be out of character with the existing uses in the general vicinity. The zone change would benefit one property owner but not at the expense of surrounding land owners.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

**Finding #8:** The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change is still defined as suburban agriculture and would allow for similar uses to what exists in the area.

e. **Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The subject property is located within the Highway 93 North Zoning District and



surrounded by suburban agricultural zoning (see Figure 2). Previous sections of this report have discussed the differences between permitted and conditional uses in the existing SAG-10 zoning and the proposed SAG-5 zoning designation. Conserving the value of buildings throughout the jurisdictional area is a function of allowing land uses that are appropriate and reasonable. Many of the land uses listed as permitted uses in the proposed SAG-5 zone exist in the vicinity of the subject property such as single family residential and agricultural uses. The permitted and conditional uses would likely not impact the value of buildings and would be appropriate land uses throughout the area of the proposed zone change because they already exist in the area. The uses allowed in the proposed zoning are similar to the existing uses.

**Finding #9:** This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the proposed SAG-5 zoning designation allows for similar uses to the neighboring suburban agricultural and residential zoning and the area is currently suburban residential.

**4. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

As previously stated, the subject property is within the boundaries of the City of Kalispell Growth Policy Future Land Use Area, updated by the City of Kalispell in 2017. The proposed Suburban Agriculture zoning designation is designed to act as a buffer between residential and agricultural zoning designations to minimize the conflict of uses.

The nearest City of Kalispell zoning is RA-2/PUD and R-3/PUD to the west and south of the subject property. The Kalispell RA-2 and R-3 zones are residential zones that allow for single family, townhouse and multi-family residential (in RA-2) on at least 6,000 square foot lots. There is also county zoning of R-2.5, Suburban Residential zoning located along the City – County border. The Suburban Agriculture zoning designations (SAG-10 and SAG-5) are designed to function as a buffer between urban residential and agricultural areas. The amendment appears to be, as nearly as possible, compatible with the zoning ordinance of the City of Kalispell.

**Finding #10:** The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the subject property is located  $\frac{3}{4}$  miles from city limits and the proposed Suburban Agriculture zoning designation is designed to act as a transition between residential and agricultural zoning designations that exist within this area.

## **V. SUMMARY OF FINDINGS**

**Finding #1:** The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the Suburban Agriculture land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.

**Finding #2:** The proposed map amendment will not impact safety from fire and other danger because the property is not located in the WUI, is located on an MDT maintained secondary highway and county-maintained local road, is located approximately 1/3 mile from the nearest fire station and is not in a Special Flood Hazard Area.

**Finding #3:** The proposed zoning map amendment would likely not have a negative impact on public health, public safety and general welfare because the property is served by the West Valley Fire Department and the Flathead County Sheriff, the property is accessed via two paved roads, and the SAG-5 zoning would allow for similar uses to what already exist in the area.

**Finding #4:** The proposed amendment would facilitate the adequate provision of transportation water, sewerage, schools, parks, and other public requirements because future growth would lead to a minimal increase in traffic on Whitefish Stage and Tronstad Road, the Montana Department of Transportation and Flathead County Road and Bridge Department will require updated approach permits for any new approach onto these roads, further division of land on the subject property would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, there would be minimal impact on parks and the proposal has the potential to generate approximately 4 school age children.

**Finding #5:** The proposed zoning map amendment will provide adequate light and air to the subject property because future development will be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation.

**Finding #6:** Effects on motorized and non-motorized transportation systems will be minimal because the Montana Department of Transportation had no specific concerns with this proposal beside the need for additional setbacks, the traffic generated by the proposed zoning would be appropriate given the proposed increase and the future improvements to Whitefish Stage under current review, and future development of the property would require an easement for a pedestrian/bike trail.

**Finding #7:** It appears that the proposed zoning designation would be compatible with urban growth in the vicinity of Kalispell because the property is located outside the annexation policy boundary but is within the extent of the City of Kalispell Growth Policy Future Land Use Area and the proposed zoning is a designation of suburban residential appears to be compatible with the proposed zoning.

**Finding #8:** The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change is still defined as suburban agriculture and would allow for similar uses to what exists in the area.

**Finding #9:** This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the proposed SAG-5 zoning designation allows for similar uses to the neighboring suburban agricultural and residential zoning and the area is currently suburban residential.

**Finding #10:** The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the proposed Suburban Agriculture zoning designation is designed to act as a transition between residential and agricultural zoning designations that exist within the area.

## **VI. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: RE